

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2708

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2708, as amended, would establish requirements for and licensure of medical marijuana testing laboratories.

Definitions

The bill would define the following terms:

- “Cannabinoid” to mean any of the diverse chemical compounds that can act on cannabinoid receptors in cells and alter neurotransmitter release in the brain, including phytocannabinoids that are produced naturally by marijuana and some other plants;
- “Medical marijuana” to mean marijuana cultivated, processed, tested, dispensed, possessed, or used for a medical purpose;
- “Medical marijuana product” to mean a product containing cannabinoids that have been extracted from plant materials or resin by physical or chemical means and intended for administration to a registered patient;
- “Medical marijuana waste” to mean:
 - Unused, surplus, returned, or out-of-date marijuana;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Recalled marijuana;
- Plant debris of the cannabis plant; and
- Any wastewater generated during growing and processing; and
- “Person” to mean any natural person, corporation, partnership, trust, or association.

The bill would also define the terms “act,” “marijuana,” “tetrahydrocannabinol (THC),” and “tetrahydrocannabinolic acid.”

Licensure (New Section 2)

The bill would require the Director of Alcoholic Beverage Control (ABC) to provide for the licensure of laboratories under the bill.

The bill would specify an application for the appropriate license shall be submitted to the ABC Director (Director) in such form and manner as prescribed by the Director by any person seeking to conduct laboratory testing of medical marijuana. The bill would require a separate license application to be submitted for each location to be operated by the licensee.

The bill would require the Director to issue a license to an applicant if:

- The required criminal history check demonstrates the applicant is not disqualified from holding a license pursuant to the bill;
- The applicant demonstrates they will not violate location and distancing requirements as described in New Section 4 of the bill;
- The applicant has submitted a tax clearance certification issued by the Department of Revenue;

- The applicant has submitted an attestation, in a form and manner specified by the Director, that confirms or denies the existence of any foreign financial interests associated with the entity applying for such license, and discloses the identity of such ownership, if applicable; and
- The applicant meets all other licensee eligibility conditions established in rules and regulations and has paid all required fees.

A license would be valid for one year from the date of issuance to a laboratory, and may be renewed by submitting a license renewal application and paying the required fee.

The bill would specify laboratory license fees of:

- \$2,000 for the nonrefundable license application;
- \$18,000 for a laboratory license; and
- \$20,000 for a renewal of a laboratory license.

Licensure Disqualifications (New Section 3)

The bill would specify that any license issued pursuant to the bill could not be issued to a person:

- Who is not a citizen of the United States;
- Who has been convicted of a felony under the laws of Kansas, any other state, or the United States;
- Who has had a license revoked for cause under the bill or who has had any license issued under the medical marijuana laws of another state revoked for cause except that a license could be issued to a person whose license was revoked for conviction of a misdemeanor at any time after ten years following the date of revocation;

- Who has been convicted of being the keeper of or is the keeper of any property where sexual relations are being sold or offered for sale by a person over age 18, or who has forfeited bond on such charges;
- Who has been convicted of being a proprietor of a gambling house, pandering, or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;
- Who is not at least 18 years of age;
- Who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer;
- Who is an employee of the Director;
- Who intends to carry on the business authorized by the license as an agent of another;
- Who, at the time of application for renewal of a license, would not be eligible for such license upon first application;
- Who is the holder of a valid and existing license issued under the bill, unless the person agrees to, and does, surrender the license to the administering officer issuing the same;
- Who does not own the premises for which a license is sought, or does not, at the time of application, have a written lease for such premises;
- Whose spouse would be ineligible to receive a license under the bill for any reason other than citizenship, residence requirements, or age, except the provisions would not apply when renewing a license;

- Whose spouse has been convicted of a felony or other crime that would disqualify a person from licensure and such felony or other crime was committed during the time that the spouse held a license;
- Who has not been a resident of the state for at least four years immediately preceding the date of application;
 - A license would be forfeited if an individual licensee ceases to be a resident at any time after the license is granted;
- Who does not provide any data or information required under the bill; or
- Who, after a hearing, has been found to have held an undisclosed beneficial interest in any license issued pursuant to the bill that was obtained by means of fraud or any false statement on the application for such license.

The bill would specify a license could not be issued to a corporation, limited liability company, limited partnership, or limited liability partnership if less than 75 percent of the total equity or similar ownership interest in such entity is owned by individuals who have been residents of Kansas for at least 4 years immediately preceding the application date. A license would be forfeited if, for more than 90 consecutive days, less than 75 percent of the total equity or similar ownership interest in such entity is owned by individuals who are residents of the state, at any time after the license is granted.

The bill would require that any:

- Transfer of a license be reported to and approved by the Director, who could not approve any transfer to any individual or entity that does not satisfy the licensing requirements at the time of transfer;

- Change in ownership of a corporation, limited liability company, limited partnership, or limited liability partnership be reported to the Director within 30 days after such change occurs. If the change would result in less than 75 percent of the total equity or similar ownership interest in such entity to be owned by individuals who have been residents of Kansas for at least 4 years, then such entity would have 90 days to ensure 75 percent or greater equity of such ownership is held by Kansas residents, or such license would be forfeited;
- Compensation, fee, expense, or similarly characterized nonequity or ownership-based payment that is contingent on or otherwise determined in a manner that factors in profits, sales, revenue, or cash flow of any kind relating to a licensee's operation, including, but not limited to, profit-based consulting fees and percentage rent payments be prohibited. The bill would require any licensee that enters into an agreement for any prohibited compensation, fee, expense, or payment to forfeit such entity's license to the Director. Such prohibited compensation fee, expense, or payment would:
 - Include any distribution that is made by an entity to one or more out-of-state individuals holding an equity or similar ownership interest in the entity if such distribution is greater than 25 percent of the total distributed amount; and
 - Not include payments of fixed amounts that are determined prior to the commencement of applicable services or payments of variable amounts based on verifiable quantities multiplied by a predetermined and reasonably fixed rate.

Licensee Location (New Section 4)

The bill would specify no licensed laboratory could be located within 1,000 feet of a:

- School;
- Religious organization;
- Public library; or
- Public park.

If a licensee relocates and the new location is within 1,000 feet of a location listed above, the bill would require the Director to revoke the licensee's license.

The bill would allow the Director the discretion not to revoke the license of a licensee which existed at a location prior to the establishment of a listed entity within 1,000 feet of the licensee.

The bill would specify the location restrictions would not apply to research related to marijuana conducted at a postsecondary educational institution, academic medical center, or private research and development organization as part of a research protocol approved by an institutional review board or equivalent entity.

The bill would define the following terms: "public library," "public park," "religious organization," and "school."

Criminal History Check (New Section 5)

The bill would require each applicant for a laboratory license to require any owner, director, officer, and any employee or agent of such applicant to be fingerprinted and submit to a state and national criminal history record check.

The Director would be authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and Federal Bureau of Investigation (FBI) for a state and national criminal history record check. The Director would be directed to use the information obtained from fingerprinting and criminal history record checks for purposes of verifying the identification of the applicant and for making a determination of the qualifications of the applicant for licensure. The KBI would be allowed to charge a reasonable fee to the applicant for the fingerprinting and conducting a criminal history record check.

***Compliance and Quality Assurance Testing
(New Section 6)***

The bill would require the Director, prior to January 1, 2023, to contract with an operational private laboratory for the purposes of conducting compliance and quality testing of medical marijuana laboratories licensed in the state in an effort to provide public safety and ensure quality medical marijuana product is available to registered patients.

Any laboratory under contract with the Director for compliance and quality assurance testing would be required to:

- Not conduct any other commercial medical marijuana testing in the state;
- Have a minimum of one year of medical marijuana testing licensure in another state and have contracted for quality assurance testing with another state;
- Not employ, or be owned by any individual:
 - Who has a direct or indirect interest in any licensee in the state;

- Whose spouse, parent, child, spouse of a child, sibling, or spouse of a sibling has an active application for a license from the Director;
- Who is a member of the board of directors of a licensee; or
- Who has a financial interest in any licensee in the state.

The bill would require the contracting laboratory to be accessible and utilized for any medical marijuana testing needs by any regulatory agency within the state, including, but not limited to, the Kansas Department for Health and Environment, the KBI, and the State Fire Marshal.

Laboratory Licensees (New Section 7)

The bill would specify a laboratory licensee must:

- Not be owned by a direct or indirect beneficial owner of a retail dispensary, cultivator, processor, or distributor;
- Comply with applicable local ordinances;
- Obtain a separate license for each laboratory; and
- Comply with the application requirements in the bill and submit any information required by the Director;
- Establish policies to prevent the appearance or existence of undue commercial, financial, or other influences that result in the diminishing of the public confidence, competency, impartiality, and integrity of the lab testing process or results;
- Not test samples for any licensee in which an owner, employee or agent of the laboratory has

any form of ownership or financial interest in the licensee that submitted the sample;

- Provide the Director access to:
 - A report of a sample's test and any underlying data conducted at the request of a licensee or registered patient; and
 - Laboratory premises and to any material or information requested by the Director to determine compliance with the bill.
- Retain and make available all laboratory test results conducted on medical marijuana or medical marijuana products for at least two years; and
- Establish standards, policies, and procedures for testing.

The bill would further require a laboratory licensee to:

- Test samples from each harvest or product batch of medical marijuana, medical marijuana concentrate, and medical marijuana product for each of the following categories:
 - Microbials;
 - Mycotoxins;
 - Residual solvents;
 - Pesticides;
 - THC and other cannabinoid potency;
 - Terpenoid potency type and concentration;
 - Moisture content;
 - Homogeneity; and
 - Heavy metals; and
- Only accept a test batch of usable medical marijuana or medical marijuana product for testing purposes from a:

- Cultivator that has separated each harvest lot of usable medical marijuana into harvest batches of no more than 10 pounds, except certain batches of medical marijuana to be sold to a processor to make a concentrate may be separated into batches of no more than 20 pounds; and
- Processor that has separated medical marijuana production lots into batches of no more than 10 pounds.

The bill would specify a laboratory licensee may accept samples of medical marijuana, medical marijuana concentrate or medical marijuana product from a licensee or entity authorized for testing and research purposes only. The bill would specify that a laboratory would not be prohibited from obtaining a license due to performing testing and research on medical marijuana and medical marijuana products.

The bill would also allow a laboratory licensee to accept samples of medical marijuana, medical marijuana concentrate, or medical marijuana product from an individual person for testing if such person is a:

- Registered patient or caregiver and provides the laboratory with the individual's registration identification and valid photo identification; or
- Participant in an approved clinical or observational study conducted by a research facility.

The bill would further allow a laboratory licensee to transfer samples to another licensed laboratory for testing. The bill would require all laboratory reports provided to or by a licensee, patient, or caregiver to identify the laboratory that performed the sample testing.

The bill would allow a laboratory licensee to utilize a licensed distributor to transport, between the licensee

requesting transport and the destination licensed laboratory, samples of medical marijuana, medical marijuana concentrates, and medical marijuana product for testing.

Laboratory Rules and Regulations (New Section 8)

The bill would require the Director to propose rules and regulations, in consultation with the compliance and quality assurance testing laboratory contracted with pursuant to the Act, as necessary to develop acceptable testing and research practices, including, but not limited to, testing, standards, quality control analysis, equipment certification and calibration, and chemical identification and substances used in bona fide research methods. After the hearing on a proposed rule and regulation has been held, as required by continuing law, the Director would be required to submit any such proposed rule and regulation to the Secretary of Revenue. If the Secretary of Revenue approves, the rule and regulation would be adopted.

The Director would be required to recommend rules and regulations for laboratory testing performed under the bill concerning:

- The cleanliness and orderliness of a laboratory premises and the location of the laboratory in a secure location;
- The inspection, cleaning, and maintenance of any equipment or utensils used for the analysis of test samples;
- Testing procedures and standards for cannabinoid and terpenoid potency and safe levels of contaminants and appropriate remediation and validation procedures;

- Controlled access areas for storage of medical marijuana and product test samples, waste, and reference standards;
- Records to be retained and computer systems to be utilized by the laboratory;
- The possession, storage, and use by the laboratory of reagents, solutions, and reference standards;
- A certificate of analysis for each lot of reference standard;
- The transport and disposal of unused medical marijuana, medical marijuana products, and waste;
- The mandatory use by a laboratory of an inventory tracking system to ensure all test harvest and production batches or samples containing medical marijuana, concentrate, or products are identified and tracked from the point they are transferred from a licensee or a registered patient or caregiver through the point of transfer, destruction, or disposal. The bill would require the inventory tracking system reporting to include the results of any tests that are conducted;
- The employment of laboratory personnel;
- A written standard operating procedure manual to be maintained and updated by the laboratory;
- The successful participation in a proficiency testing program approved by the Director for each testing required by the bill, in order to obtain and maintain certification;
- The establishment and adherence to a quality assurance and quality control program to ensure sufficient monitoring of laboratory processes and the quality of results reported;

- The immediate recall of medical marijuana or products that test above allowable thresholds or are otherwise determined to be unsafe;
- The establishment by the laboratory of a system to document the complete chain of custody for samples from receipt through disposal;
- The establishment by the laboratory of a system to retain and maintain all required records, including business records, and processes to ensure results are reported in a timely and accurate manner; and
- Any other aspect of laboratory testing of medical marijuana or product deemed necessary by the Director.

Additional Requirements (New Section 9)

The bill would allow a laboratory licensee to:

- Obtain medical marijuana from one or more licensed cultivators, processors, or retail dispensaries; and
- Conduct medical marijuana testing as permitted by rules and regulations adopted by the Secretary of Revenue.

The bill would specify that laboratory licensure would be contingent upon successful onsite inspection, participation in proficiency testing, and ongoing compliance with the bill.

A laboratory would be required to be inspected prior to initial licensure and up to six times annually by an inspector approved by the Director. The Director would be authorized to enter a licensed laboratory premises to conduct investigations and inspections when deemed necessary due to possible violation of the bill.

The bill would require, prior to laboratory licensure and renewal, accreditation by the national environmental laboratory accreditation program, ANSI/ASQ national accreditation board, or another accrediting body approved by the Director after January 1, 2022.

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of a representative of the Capitol Lobby Group.

House Committee on Federal and State Affairs

In the House Committee hearing, a representative of the Capitol Lobby Group provided **proponent** testimony, stating the medical marijuana industry is lacking standardization, and establishing quality assurance lab testing would be beneficial.

The ABC Director provided neutral testimony.

No **opponent** testimony was provided.

The House Committee amended the bill to add:

- Definitions;
- Provisions related to laboratory licensure;
- Provisions related to licensure disqualification;
- Licensee location requirements;
- Criminal history check requirements; and
- Laboratory rules and regulations.

The House Committee also made technical changes.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General, KBI, and the Kansas Department of Revenue indicate enactment of the bill would have no fiscal effect. The Kansas Association of Counties states that testing facilities would be required to comply with local zoning ordinances, which would include notice and hearing requirements, but a fiscal effect would be negligible and absorbed within existing resources. The League of Kansas Municipalities indicates enactment of the bill would have no fiscal effect.

Medical marijuana; laboratory; testing